IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 325 OF 1997

Sanjay Ganpati Mali ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

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Shri Umesh Mankapure for Shri R.V.More for the appellant.
Shri A.M.Shringarpure APP for the State.

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CORAM ; V.G.PALSHIKAR &
R.C. CHAVAN, JJ.

DATED; 5TH JULY, 2005

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the judgment dated 23-5-1997 passed by the Additional Sessions Judge, Kolhapur in Sessions Case No. 73 of 1996, the appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the appellant and the learned APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution story stated briefly is that on 20th July 1995 the police in Shirol, District Kolhapur called one Sadashiv as panch in the primary health centre at Shirol to conduct panchanama on the dead body, said to be of Sujata Mali, who was wife of the present accused. The allegations were that the accused killed his wife and burnt her body to destroy the evidence in that regard. According to the panchanama of the spot, the father in law of the victim Sujata stated that around 5.45 in the morning of 20th July, he heard shouts in the bath room of the house. He rushed to the bath room and found the bath room was closed, which was dashed opened and the victim was found burning inside. The accused tried to pour water and drowse the fire. The victim was thereafter admitted in the hospital where she died. Accidental death was recorded and investigation was taken up. During the course of investigation, the police suspected murder and therefore arrested the accused and prosecuted under sections 302 and 201 of IPC. On completion of investigation, he was tried by the Additional Sessions Judge, Kolhapur before whom, the prosecution examined 10 witnesses and the learned trial Judge accepting the evidence of these witnesses convicted the accused to suffer imprisonment for life under section 302 IPC and

to suffer 7 years R.I. under section 201 of IPC. It is this order of conviction and sentence which is challenged before us in this appeal.

4. P.w.1 Sadashiv is the panch to the inquest panchanama. He has proved it as Exh.18 and has deposed that the body was found in a complete burnt state. P.w.2 Annasaheb is another panch, who was present when spot panchanama was recorded. He has given in the panchanama the description of how the bath room was found when the panchanama was made. He has also deposed that the latch (kadi) was found lying in the bath room. The panchanama is proved as Exh.20.

5. Exh.21 is the report of Forensic Science Laboratory in relation to burnt pieces of cloth and plastic can. The report states that it was smelling of kerosene. P.w.3 Ashok is brother of the victim and has deposed that she was illtreated by her in-law including the accused/appellant and he was called a woman of bad omen (kulkshini). He was so taunted because immediately after her marriage original accused no.3 i.e. sister of the present appellant lost her husband. He has deposed that he heard about the illness of his sister Sujata and later on learnt that she died because of her burnt and he therefore lodged a complaint to the police

which he has proved as Exh.23. It was on the basis of this complaint that the investigation was taken up of the death of Sujata which was earlier recorded as accidental.

6. P.w.4 is Maruti Mali. The entire evidence of this witness is hearsay. He heard from the complaint P.w.3 that Sujata was illtreated by her in-laws. He received a call regarding illness of Sujata and later on learnt that her death was caused due to strangulation. This witness cannot therefore be used for any purpose as entire deposition of this witness being basically hearsay.

7. Similar is the deposition of P.w.5 Dattatraya, P.w.6 Shrikant and P.w.7 Rajendra. P.w.6 Shrikant and P.w.7 Rajendra apart from saying that accused telling them that Sujata had burnt herself, nothing more has stated. P.w.8 Ranjeet is the driver of ambulance in which Sujata was transported to the hospital. P.w.9 Yosuf is Asstt. Police Inspector who conducted the investigation. P.w.10 is Dr. Suman who examined the victim and who conducted the post martum and opined that the death was homicidal. It was on appreciation of this evidence that the learned trial Judge found the accused husband, the present appellant, guilty of

murder under section 302 of IPC and for destroying the evidence u/s. 201 IPC, sentenced him as aforesaid. However the learned Judge has on consideration of the evidence on record acquitted all the accused under section 498 A of IPC. The learned trial Judge has therefore appreciated the entire evidence on record and has come to the conclusion that the prosecution has failed to prove any illtreatment by any of the accused to the victim. This finding and order of acquittal is not questioned by anybody and has therefore become final. The finding that none of the accused were giving illtreatment to the victim is therefore a final finding on facts, which will have to be accepted while considering this appeal.

8. As will be seen from our discussion of the evidence above, there is no eye witness to the incident and the entire conviction rests on circumstantial evidence. The circumstances which may be held proved on acceptance of the entire evidence of the prosecution as stated above are:

1. Sujata died due to burning.

2. There were sign of throttling also.

3. Death occurred in bath room, which was locked from inside and was broken opened by the people including

the accused who attempted to save Sujata and took her to hospital.

4. There is evidence of the breaking of door.

It was on the basis of these circumstances, that the learned Judge recorded his finding of conviction, correctness of which is questioned before us.

9. Even if it is assumed that all the above four circumstances are proved, in our opinion following the dicta of the Supreme Court of India **in Sharad Sarda Vs. State of Maharashtra reported in AIR 1984 S.C. page 1622** the prosecution has failed to prove any circumstances disclosing motive. There is no reason why the accused should have killed the victim when, on the evidence as it stands, the trial Judge has concluded that there was no illtreatment by the in-laws of the victim. There is no other evidence saying this motive. Lack of motive and proof thereof, has therefore one circumstance, which the prosecution has not proved. No circumstance proved on record to show how the accused could have burnt the victim. Exh.21 which is report of the Forensic Science laboratory and which speaks of smell of kerosene cannot be used as a circumstance against the accused, as the fact that

victim died burnt due to kerosene is undisputable. At the same time merely because she died due to burn and that the accused alone was responsible for that and therefore guilty of murder. Even for causing homicidal death not amounting to murder it is essential to prove at a well defined relationship between the act and the commission thereof at the hands of the accused. There is no proof whatsoever on record to show that accused had any intention to kill his wife. In view of the fact that the bath room where the victim died was locked from inside, there is no room for even conjuncture that the husband could have done the act. There is positive finding by the trial Judge that none of the accused persons were guilty of any offence which can lead to conviction under section 302 IPC. In such circumstances the fact that the wife died by burning and the possibility of the expression by the doctor that there was some evidence of throttling, and a cohesive reading of the cross examination of the doctor cannot give rise to a confirm finding that she died due to throttling and not due to burning. In such circumstances, in our opinion, the finding of guilty under section 302 IPC is unsustainable in law. The circumstantial evidence as proved and which even if accepted, cannot give rise of allegable application of such guilty. We are therefore unable to agree with the

order of conviction, which is liable to be set aside. In the result, therefore, appeal succeeds and is allowed. The accused is acquitted of the charges levelled against him both under sections 302 and 201 of IPC. He is already on bail and his bail bonds are cancelled.

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